

House Bill 324 (AS PASSED HOUSE AND SENATE)

By: Representatives Neal of the 1st, Collins of the 27th, Cooper of the 41st, Gardner of the 57th,
and Murphy of the 120th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 4 of Title 37 of the Official Code of Georgia Annotated, relating to the habilitation of the developmentally disabled generally, so as to revise definitions; to repeal various obsolete provisions relating to procedures for obtaining services from the Department of Behavioral Health and Developmental Disabilities relative to developmentally disabled persons; to provide for hearings by administrative law judges; to eliminate hearing examiners; to amend various other titles of the Official Code of Georgia Annotated, so as to revise provisions for purposes of conformity; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 37 of the Official Code of Georgia Annotated, relating to the habilitation of the developmentally disabled generally, is amended in Code Section 37-4-2, relating to definitions, as follows:

"37-4-2.

As used in this chapter, the term:

- (1) 'Client' means any person with a developmental disability who seeks habilitation under this chapter or any person for whom such habilitation is sought.
- (2) 'Clinical record' means a written record pertaining to an individual client and includes habilitation record, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility and which pertains to the client's habilitation. Such other information as may be required by rules and regulations of the board shall also be included.
- (3) 'Community services' means all services deemed reasonably necessary by the Department of Behavioral Health and Developmental Disabilities to provide for the education, training, habilitation, and care of developmentally disabled individuals. Such services shall include, but not be limited to, diagnostic and evaluation services, day-care

and training services, work activity services, community residential services such as group family care homes, transportation services, social services, medical services, and specified home services.

(4) 'Comprehensive ~~evaluation team~~' or 'comprehensive habilitation team' means and shall consist of a group of persons with special training and experience in the assessment of needs and provision of services for developmentally disabled persons, ~~which. The~~ group shall include, at a minimum, persons qualified to provide social, psychological, medical, and other services. The department shall specify the qualifications of the individuals who comprise ~~a comprehensive evaluation team or~~ a comprehensive habilitation team and shall ensure that such teams are located throughout the state so as to provide diagnostic, evaluation, and habilitation services for all citizens of Georgia.

(5) 'Court' means:

(A) In the case of an individual who is 17 years of age or older, the probate court of the county of residence of the client or the county in which such client is found. Notwithstanding Code Section 15-9-13, in any case in which the judge of said probate court is unable to hear a case brought under this chapter within the time required for such hearing, said judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and shall be otherwise qualified for his or her duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or the judge's successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed with the approval of the governing authority of the county for which such person is appointed and shall be paid from the county funds of said county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the client or the county in which such client is found.

~~(6) 'Developmentally disabled person in need of community services' means a developmentally disabled person who, after comprehensive evaluation, is found to be in need of community services as defined in Code Section 37-5-3.~~

~~(7) 'Developmentally disabled person requiring temporary and immediate care' means a person who is developmentally disabled, and:~~

~~(A) Who presents a substantial risk of imminent harm to himself or herself or others;~~

~~(B) Who is in need of immediate care, evaluation, stabilization, or treatment for certain developmental, medical, or behavioral needs; and~~

~~(C) For whom there currently exists no available, appropriate community residential setting for meeting the needs of the person.~~

~~(8)~~(6) 'Facility' means any state owned or state operated institution utilized 24 hours a day for the habilitation and residence of persons who are developmentally disabled, any facility operated or utilized for such purpose by the United States Department of Veterans Affairs or any other federal agency, and any other facility within the State of Georgia approved for such purpose by the department.

~~(9)~~(7) 'Full and fair hearing' or 'hearing' means a proceeding before ~~a hearing examiner~~ an administrative law judge, under Code Section 37-4-42, or before a court, as defined in paragraph (5) of this Code section. The hearing may be held in a regular courtroom or in an informal setting, in the discretion of the ~~hearing examiner~~ administrative law judge or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The client shall be provided with effective assistance of counsel. If the client cannot afford counsel, the court shall appoint counsel for him or her or the ~~hearing examiner~~ administrative law judge shall have the court appoint such counsel. The client shall have the right to confront and cross-examine witnesses and to offer evidence. The client shall have the right to subpoena witnesses and to require testimony before the ~~hearing examiner~~ administrative law judge or in court in person or by deposition from any physician upon whose evaluation the decision of the ~~hearing examiner~~ administrative law judge or the court may rest. The client shall have the right to obtain a continuance for any reasonable time for good cause shown. The ~~hearing examiner~~ administrative law judge and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the client. The standard of proof shall be by clear and convincing evidence. At the request of the client, the public may be excluded from the hearing; and the client need not be present if the court consents; in either of these events, the record shall reflect the reason for the ~~hearing examiner's~~ administrative law judge's or the court's action.

~~(10)~~(8) 'Habilitation' means the process by which program personnel help clients acquire and maintain those life skills which will enable them to cope more effectively with the demands of their own persons and of their environment and to raise the level of their physical, mental, social, and vocational abilities.

~~(11)~~(9) 'Individualized program plan' means a proposed habilitation program written in behavioral terms, developed by the comprehensive ~~evaluation~~ habilitation team, and specifically tailored to the needs of an individual client. Each plan shall include:

(A) A statement of the nature of the client's specific problems and specific needs;

(B) A description of intermediate and long-range habilitation goals and a projected timetable for their attainment;

(C) A description of the proposed habilitation program and its relation to habilitation goals;

(D) Identification of the facility and types of professional personnel responsible for execution of the client's habilitation program;

(E) A statement of the least restrictive environment necessary to achieve the purposes of habilitation, based upon the needs of the client;

(F) An explanation of criteria for acceptance or rejection of alternative environments for habilitation; and

(G) Proposed criteria for release of the client into less restrictive habilitation environments upon obtaining specified habilitation goals.

~~(12)~~(10) 'Least restrictive alternative,' 'least restrictive environment,' or 'least restrictive appropriate habilitation' means that which is the least restrictive available alternative, environment, or appropriate habilitation, as applicable, within the limits of state funds specifically appropriated therefor.

~~(13)~~(11) 'Person in charge of a client's habilitation' means a superintendent or regional state hospital administrator of a facility, a case manager, or any other service provider designated by the department to have overall responsibility for implementation of a client's individualized program plan. The department shall designate such a person for each individual ordered to receive services from the department under this chapter.

~~(14)~~(12) 'Representatives' means the persons appointed as provided in Code Section 37-4-107 to receive any notice under this chapter.

~~(15)~~(13) 'Superintendent' means the chief administrative officer who has overall management responsibility at any facility, other than a regional state hospital or state owned or operated community program, receiving developmentally disabled persons under this chapter or an individual appointed as the designee of such superintendent."

SECTION 2.

Said chapter is further amended in Code Section 37-4-5, relating to validity of hospitalization orders entered before September 1, 1978, as follows:

"37-4-5.

(a) No hospitalization of a developmentally disabled person lawful before September 1, 1978, shall be deemed unlawful because of the enactment of this chapter. The board is authorized to establish reasonable regulations to require that the superintendent or regional state hospital administrator of each facility where developmentally disabled persons are in residence apply under Code Section 37-4-42 for an order authorizing continued care of a

client for whom such care is necessary and who was initially hospitalized under an order of a court prior to September 1, 1978. Such prior orders of hospitalization entered by the courts, unless superseded at an earlier date by an order under this chapter, or unless such prior orders expire under their own terms at an earlier date, shall remain valid until 12 months following September 1, 1978, after which all such orders shall be null and void and of no effect.

(b) No hospitalization of a person with developmental disabilities which was lawful before July 1, 2011, shall be deemed unlawful because of the repeal of former Code sections under Article 2 of this chapter."

SECTION 3.

Said chapter is further amended by repealing and reserving Part 1 of Article 2, relating to general provisions relative to procedures for obtaining services from the department.

SECTION 4.

Said chapter is further amended by repealing and reserving Code Sections 37-4-40, 37-4-41, and 37-4-43, relating to filing petitions with the court for according of program of services to developmentally disabled persons, procedure upon failure of or client's noncompliance with court ordered habilitation programs, and appointment of hearing examiners for hearings as to continued habilitation, respectively.

SECTION 5.

Said chapter is further amended by repealing Code Sections 37-4-40.1, 37-4-40.2, 37-4-40.3, 37-4-40.4, and 37-4-40.5, relating to certification that a person requires temporary care, admission or discharge of a person in custody of a state facility for temporary care, rights of a person in custody of a state facility for temporary care, evaluation of a person in custody of a state facility for temporary care, and hearings to determine disposition of persons in custody of a state facility for temporary care, respectively.

SECTION 6.

Said chapter is further amended by revising Code Section 37-4-42, relating to procedure for continuation of court ordered habilitation, as follows:

"37-4-42.

(a) If it is necessary to continue habilitation of a client beyond the end of the period during which the facility is currently authorized by order of a court or of an administrative law judge under this chapter to retain the client, the superintendent or regional state hospital

168 administrator, prior to the expiration of the period, shall seek an order authorizing such
169 continued habilitation in the manner provided in this Code section.

170 (b) A Committee for Continued Habilitation Review shall be established by the
171 superintendent or regional state hospital administrator of each facility and shall consist of
172 not less than five persons who meet the same requirements as those persons eligible to be
173 members of the comprehensive ~~evaluation~~ habilitation team as defined in Code Section
174 37-4-2. The committee may conduct its meetings with a quorum of any three members.
175 The function of this committee shall be to review and evaluate the updated individualized
176 program plan and to report to the superintendent or regional state hospital administrator its
177 recommendations concerning the client's need for continued habilitation. No person who
178 has responsibility for the habilitation of the individual client for whom continued
179 habilitation is requested shall serve on any committee which reviews such individual's case.

180 (c) If the superintendent or regional state hospital administrator desires to seek an order
181 under this Code section authorizing continued habilitation for up to 12 months beyond the
182 expiration of the currently authorized period of habilitation, he or she shall first file a notice
183 of such intended action with the Committee for Continued Habilitation Review, which
184 ~~notice~~ shall be forwarded to the committee at least 60 days prior to the expiration of that
185 period.

186 (d) Within ten days of the date of the notice, the committee shall meet to consider the
187 matter of the superintendent's or regional state hospital administrator's intention to seek an
188 order for continued habilitation. Prior to the committee's meeting, the client and his or her
189 representatives shall be notified of the following: the purpose of such meeting, the time and
190 place of such meeting, their right to be present at such meeting, and their right to present
191 any alternative individualized program plan secured at their expense. In those cases in
192 which the client will not or cannot appear, at least one member of the committee will make
193 all reasonable efforts to interview the client and report to the committee. An updated
194 individualized program plan for the client shall be presented to the committee. The
195 committee shall report to the superintendent or regional state hospital administrator or his
196 or her designee, other than the attending physician or a member of the committee, its
197 written recommendations along with any minority recommendations which may also be
198 submitted. Such report ~~will~~ shall specify whether or not the client is a developmentally
199 disabled person requiring continued habilitation and whether continued habilitation is the
200 least restrictive alternative available.

201 (e) If after considering the committee's recommendations and minority recommendations,
202 if any, the superintendent or regional state hospital administrator or his or her designee,
203 other than the attending physician or a member of the committee, determines that the client

is not a developmentally disabled person requiring continued habilitation, the client shall be discharged from the facility pursuant to subsection (b) of Code Section 37-4-44.

(f) If after considering the committee's recommendations and minority recommendations, if any, the superintendent or regional state hospital administrator or his or her designee, other than the client's attending physician or a member of the committee, determines that the client is a developmentally disabled person requiring continued habilitation, he or she shall, within ten days after receiving the committee's recommendations, serve a petition for an order authorizing continued habilitation along with copies of the updated individualized program plan and the committee's report on the designated office within the department and shall also serve such petition along with a copy of the updated individualized program plan on the client. The petition shall contain a plain and simple statement that the client or his or her representatives may file a request for a hearing with ~~a hearing examiner appointed pursuant to Code Section 37-4-43~~ the Office of State Administrative Hearings within 15 days after service of the petition, that the client has a right to counsel at the hearing, that the client or his or her representatives may apply immediately to the ~~court~~ administrative law judge to have counsel appointed if the client cannot afford counsel, and that the ~~court~~ administrative law judge will appoint counsel for the client unless the client indicates in writing that he or she will have retained counsel by the time set for hearing or does not desire to be represented by counsel.

(g) If a hearing is not requested by the client or the representatives within 15 days after service of the petition on the client and his or her representatives, the ~~hearing examiner~~ administrative law judge shall make an independent review of the committee's report, the updated individualized program plan, and the petition. If he or she concludes that continued habilitation may not be necessary or if he or she finds any member of the committee so concluded, then he or she shall order that a hearing be held pursuant to subsection (h) of this Code section. If he or she concludes that continued habilitation is necessary, then he or she shall order continued habilitation for a period not to exceed one year.

(h) If a hearing is requested within 15 days after service of the petition on the client and his or her representatives or if the ~~hearing examiner~~ administrative law judge orders a hearing pursuant to subsection (g) of this Code section, the ~~hearing examiner~~ administrative law judge shall set a time and place for the hearing to be held within 25 days of the time the ~~hearing examiner~~ administrative law judge receives the request, but, in any event, no later than the day on which the current order for habilitation expires. Notice of the hearing shall be served on the client, his or her representatives, the facility, and, when appropriate, on counsel for the client. The ~~hearing examiner~~ administrative law judge, within his or her discretion, may grant a change of venue for the convenience of parties or witnesses. Such

hearing shall be a full and fair hearing, except that the client's attorney, when the client is unable to attend the hearing and is incapable of consenting to a waiver of his or her appearance, may move that the client not be required to appear; however, the record shall reflect the reasons for the ~~hearing examiner's~~ administrative law judge's actions.

(i) After such hearing, the ~~hearing examiner may issue any order which the court is authorized to issue under subsection (e) of Code Section 37-4-40, provided that the hearing examiner~~ administrative law judge may order the client's continued habilitation for a period not to exceed one year, subject to the power of the superintendent or regional state hospital administrator to discharge the client under subsection (b) of Code Section 37-4-44; provided, however, that if the administrative law judge finds that the client is not developmentally disabled or is not in need of care, training, education, habilitation, or other specialized services which the client is then receiving, the administrative law judge shall dismiss the petition.

~~(i) The hearing examiner for a client who was admitted under the jurisdiction of the juvenile court and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this chapter or without having waived such hearing shall order that a hearing be held pursuant to subsection (h) of this Code section."~~

SECTION 7.

Said chapter is further amended in Code Section 37-4-82, relating to payment of expenses incurred in connection with hearings held under Chapter 4 of Title 37, as follows:

"37-4-82.

(a) Except as provided in this Code section, the expenses of any hearing held under this chapter by a court or by a ~~hearing examiner~~ an administrative law judge, including attorneys' fees authorized by paragraph (1) of subsection (b) of this Code section and including ~~hearing officer~~ expenses authorized by paragraph (3) of subsection (b) of this Code section, shall be paid by the county in which the client has his or her residence or, if the client is a transient, by the county in which the client was initially taken into the custody of the state. Payment by such county of the hearing expenses shall only be required if the person who actually presides over the hearing executes an affidavit or includes a statement in his or her final order relating to the hearing that the assets of the client, his or her estate, and any persons legally obligated to support the client appear to be insufficient to defray such expenses, based upon all relevant information available to the person who actually presides over the hearing. Such affidavit or statement may include the client's name, address, and age. The cost on appeal to the appropriate court shall be the same as provided for in other appeals from the probate and juvenile courts.

(b) Expenses of any hearing held under this chapter shall include:

(1) The fee to be paid to an attorney appointed under this chapter to represent a patient at such hearing. Such fee shall be as agreed between the attorney and the appointing court but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant, plus actual expenses which an attorney may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the attorney may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph;

(2) The fee to be paid to the court, ~~which fee shall be~~ to defray the cost of clerical help and the cost of any additional office space and equipment required for the conduct of such hearing. In hearings conducted pursuant to Code Section 37-4-42 such fee shall be \$20.00, and in all other hearings under this chapter such fee shall be \$40.00, excluding attorneys' fees and expenses of the ~~hearing officer~~ administrative law judge; and

(3) The fee to be paid to a ~~hearing officer~~ an administrative law judge appointed pursuant to subparagraph (A) of paragraph (5) of Code Section 37-4-2 to conduct a hearing. Such fee shall be as agreed between the ~~hearing officer~~ administrative law judge and the appointing court, but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which the ~~hearing officer~~ administrative law judge may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the ~~hearing officer~~ administrative law judge may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph. The \$40.00 court cost authorized by paragraph (2) of this subsection shall also be authorized to defray the cost of clerical help and additional office space and equipment required for the conduct of such hearings."

SECTION 8.

Said chapter is further amended in Code Section 37-4-110, relating to appeal rights of clients, their representatives, or attorneys, as follows:

"37-4-110.

The client, the client's representatives, or the client's attorney may appeal any order of the probate court or ~~hearing officer~~ administrative law judge rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals and

the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals and the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The client must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The client shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court as provided by law. The client shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the client by the court. The appeal rights provided to the client, the client's representatives, or the client's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the client, the client's representatives, or the client's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3."

SECTION 9.

Code Section 17-7-131 of the Official Code of Georgia Annotated, relating to proceedings upon plea of insanity or mental incompetency at the time of the crime, is amended by revising paragraph (3) of subsection (e), as follows:

"(3) The defendant shall be detained in custody until completion of the hearing. The hearing shall be conducted at the earliest opportunity after the expiration of the 30 days' evaluation period but in any event within 30 days after receipt by the prosecuting attorney of the evaluation report from the mental health facility. The court may take judicial notice of evidence introduced during the trial of the defendant and may call for testimony from any person with knowledge concerning whether the defendant is currently a mentally ill person in need of involuntary treatment, as defined by paragraph (12) of Code Section 37-3-1, or currently mentally retarded and in need of being ordered to receive services, as those terms are defined by paragraph (12) of Code Section 37-3-1 and Code Section 37-4-40 a person with a developmental disability, as defined in paragraph (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself or herself or others. The prosecuting attorney may cross-examine the witnesses called by the court and the defendant's witnesses and present relevant evidence concerning the issues presented at the hearing."

SECTION 10.

Code Section 31-22-9.1 of the Official Code of Georgia Annotated, relating to who may perform HIV tests, is amended by revising subparagraph (a)(8)(B), as follows:

"(B) Facility for ~~the mentally ill; persons or persons with developmental disabilities,~~
as such terms are defined in Code Section 37-1-1 ~~developmentally disabled,~~ or
alcoholic or drug dependent persons, as defined in ~~Code Sections 37-3-1, 37-4-2, and~~
Code Section 37-7-1, ~~respectively;~~"

SECTION 11.

Said chapter is further amended in Code Section 37-9-6, relating to standards for determination of assessments for less than the full cost of care, as follows:

"37-9-6.

The board shall establish standards for determining assessments when such assessments are less than the full cost of care. Such standards shall be based on the income, assets, and other circumstances of the persons liable for cost of care and shall include consideration of the number of dependents, as defined under Georgia income tax law and regulations; legal rights to payment under any insurance agreement, and other evidence of ability to pay; but no assessment shall be fixed or collected on the basis of any assets exempted by subsection (b) of Code Section 37-9-8. In determining assessments for persons liable for cost of care, the department shall develop procedures to ensure that no dependent, deduction, or personal exemption as defined by Georgia income tax law will be reflected more than once in the determination of assessments for any one patient. In establishing standards to determine such assessments, the board shall adopt criteria to be applied uniformly to all persons liable for cost of care, except that the board may adopt separate criteria for assessing monthly benefits or funds from any source to cover cost of care, support, and treatment provided to patients who are hospitalized for longer than three months and whose current needs, as defined by the Social Security Administration, are being met. However, the board shall ensure that the assessment made each month shall allow the recipients of such benefits or funds to retain at a minimum an amount as a personal allowance equal to the amount of the personal needs allowance allowed beneficiaries under the state medical assistance plan. Further, such standards will include special provisions for assessing ~~developmentally disabled respite care admissions under Code Section 37-4-21 or any other respite program~~ developmental disabilities respite care allowed by law or duly adopted departmental regulations, where such admissions are legally limited to 56 days of care a year. To the extent practicable, such criteria shall ensure that persons having the same or substantially the same financial ability to pay cost

382 of care shall have the same or substantially the same financial obligation to pay such cost
383 of care."

384 **SECTION 12.**

385 All laws and parts of laws in conflict with this Act are repealed.